

## **THE ADVOCATES ACT, 1961**

(Act no. 25 of 1961)

The Indian High Courts Act, 1861 (commonly known as the Charter Act) passed by the British Parliament enabled the Crown to establish High Courts in India by Letters Patent and these Letters Patent authorised and empowered the High Courts to make rules for advocates and attorneys (commonly known as Solicitors). The law relating to Legal Practitioners can be found in the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920) and the Indian Bar Councils Act, 1926 (38 of 1926).

After Independence it was deeply felt that the Judicial Administration in India should be changed according to the needs of the time. The Law Commission was assigned the job of preparing a report on the Reform of Judicial Administration. In the mean while the All India Bar Committee went into detail of the matter and made its recommendations in 1953. To implement the recommendations of the All India Bar Committee and after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendation relate to the Bar and to legal education, a Comprehensive Bill was introduced in the Parliament.

### **STATEMENT OF OBJECTS AND REASONS**

The Bill seeks to implement the recommendations of the All India Bar Committee made in 1953, after taking into account the recommendations of the Law Commission on the subject of Reform of Judicial Administration in so far as the recommendations relate to the Bar and to legal education.

The main features of the Bill are, -

- (1) The establishment of an All India Bar Council and a common roll of advocates, and advocate on the common roll having a right to practice in any part of the country and in any Court, including the Supreme Court;
2. The integration of the bar into a single class of legal practitioners known as advocates;
3. The prescription of a uniform qualification for the admission of persons to be advocates;
4. The division of advocates into senior advocates and other advocates based on merit;
5. The creation of autonomous Bar Councils, one for the whole of India and one for each State.

Following the recommendations of the All India Bar Committee and the Law Commission, the Bill recognised the continued existence of the system known as the dual system now prevailing in the High Court of Calcutta and Bombay, by making suitable provisions in that behalf: It would, however, be open to the two High Courts, if they so desire, to discontinue this system at any time.

The Bill, being a comprehensive measure, repeals the Indian Bar Council Act, 1926, and all other laws on the subject.

The Notes on clauses explain, whenever necessary, the various provisions of the Bill.

Act 25 of 1961

The Advocate Bill was passed by both the Houses of Parliament and it received the assent of the President on 19th May, 1961 and it became The Advocates Act, 1961 (25 of 1961).

Preamble

[19th May, 1961]

An act to amend and consolidate the law relating to legal practitioner and to provide for the constitution of Bar Councils and an All India Bar.

Be it enacted by Parliament in the 12th year of the Republic of India as Follows:

## **THE ADVOCATES ACT,1961**

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### **CHAPTER I -PRELIMINARY**

#### **1. Short title, extent and commencement -**

Notification

1. This Act may be called the Advocates Act, 1961.

2. (Note: Subs. by Act 60 of 1973, Sec.2, for sub-section (2) (w.e.f.31-1-1974)) It extends (Note The Act has been extended to-The Union territory of Dadra & Nagar Haveli by Regulation 8 of 1963, The Union territory of Pondicherry by Act 26 of 1968, Sec.3 and Sch.) to the whole of India.

3. It shall in relation to the territories other than those referred to in sub section come into force on such date

(Note - The following are the Notifications by which different dates have been appointed for different provisions of this Act:-

Notification Date Provisions

S.O.1870, dated 7th August,1961 16/08/1961 Chapters I, II and VII.

S.O.2790, dated 24th November,1961 01/12/1961 Chapter III and sub-section (2) of section 50.

S.O.2919, dated 13th December, 1961 15/12/1961 Sub-section (1) of section 50.

S.O.297, dated 24th January,1962 24/01/1962 Sections 51 and 52.

S.O.958, dated 29th March, 1962 29/03/1962 Section 46.

S.O.50. dated 4th January,1963 04/01/1963 Section 32 and chapter VI [except section 46, sub-section (1) and (2) of section 50, sections 51 and 52].

S.O.2509, dated 31st August,1963 01/09/1963 Chapter V

S.O.1500, dated 5th April 1969 01/06/1969 Sections 29, 31, 33 and 34 of Chapter IV

In Pondicherry, Pondicherry Gazette, 10/06/1968 Chapters I, II and III, Section 32,

Extra., p.1, dated 7th June,1968 Chapters IV, V, VI and VIII.)

as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

4. (Note: Sub-section (4) Ins. by Act 60 of 1973, sec.2) This Act shall, in relation to the State of Jammu and Kashmir (Note: 01/08/1979, vide GSR 946 (E), dated 15/07/1986 (except section 30) the Act is enforced in the State of Jammu & Kashmir) and the Union territory of Goa, Daman and Diu, come into force on such date (Note: 01/08/1986, vide GSR 84(E)/1979, (except section 30) the Act is enforced in Goa, Daman and Diu.) as the Central Government may, by notification in the Official Gazette, appoint in this behalf, and different dates may be appointed for different provisions of this Act.

**2. Definitions** - (1) (Note:- Section 2 renumbered as sub-section (1) thereof by Act 60 of 1973, sec.2 (w.e.f. 31/07/1974) In this Act, unless the context otherwise requires-

a. "advocate" means an advocate entered in any roll under the provisions of this Act.

b. "appointed day" in relation to any provision of this Act, means the day on which that provision comes into force.

- c. (Note:- Clause ( C ) omitted by Act 107 of 1976, section 2)
- d. "Bar council" mean a Bar Council constituted under this Act.
- e. "Bar Council of India" mean the Bar Council constituted under Section 4 for the territories to which this Act extends.
- f. (Note:- Clause (f) omitted by Act 60 of 1973, sec.3)
- g. "High Court" except in sub section (1) (Note:- Ins. by Act 60 of 1973, sec.3) and sub section (1A) of section 34 and in section 42 and 43 does not include a court of the Judicial Commissioner, and, in relation to a State Bar Council, means.
- (i) in the case of a Bar Council constituted for a State or for a State and one or more Union territories, the High Court for the State.
- (ii) in the case of the Bar council constituted for Delhi [(Note:- Subs. by Act 60 of 1973, sec.3) the High Court of Delhi].
- h. "Law graduate " means a person who has obtained a bachelor?s degree in law from any university established by law in India.
- i. "Legal practitioner" means an advocate (Note:- Subs. by Act No.107 of 1976, sec.2) (or vakil) of any High court, a pleader, mukhtar or revenue agent.
- j. "prescribed" means prescribed by rules made under this Act.
- k. "roll" means a roll of advocates prepared and maintained under this Act,
- l. "State" does not include a Union territory
- m. "State Bar Council" means a Bar council constituted under section 3
- n. "State roll" mean roll of advocates prepared and maintained by a State Bar Council under Section 17.
- (2) (Note:- Ins. by Act 60 of 1973, sec.2, Goa is now a state, see Goa, Daman and Diu Reorganisation Act,1987 (18 of 1987) sec.3 (w.e.f. 30/05/1987) Any reference in this Act to a law which is not in force in the State of Jammu and Kashmir or in the Union territory of Goa, Daman and Diu, shall in relation to that State or that territory, be construed as a reference to the corresponding law, if any, in force in that State or that territory , as the case may be.)

## **THE ADVOCATES ACT,1961**

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### **CHAPTER II-BAR COUNCILS**

#### **3. State Bar Councils-** There shall be a Bar Council-

- a. For each of the States of Andhra Pradesh, Bihar, Gujarat, (Note:- Ins. by Act 60 of 1973, sec.4) (Jammu and Kashmir), Madhya Pradesh, (Note:- The word "Madras" omitted by Act 26 of 1968, sec.3 and Sch.) (Note:- The Word "Maharashtra" omitted b the Daddra and Nagar Haveli (Civil Courts and Miscellaneous Provisions) Regulations, 1963 (8 of 1963), sec.12) (Note:- Subs. by the Mysore state (Alteration of Name) (Adaptation of Laws on Union Subjects) Order,1974.) Karnataka, Orissa, Rajasthan and Uttar Pradesh, to be known as the Bar Council of that State.
- b. (Note:- Subs. by Act 69 of 1986, sec.19, for clause (6) as earlier amended by Act 81 of 1971, sec.34 and Act 34 of 1986, sec.16) For the States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, and Tripura to be known as the Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, Mizoram and Arunachal Pradesh.
- c. For the State of Kerala and the Union territory of Lakshadweep, Minicoy and Amindivi islands to be known as the Bar Council of Kerala.

(cc) (Note: Ins. by Act 26 of 1968, sec.3 and Sch.) For the (Note:- Subs. by the Madras State (Alteration of Name) (Adaptation of Laws on Union Subjects) Order, 1970, for the words "State of Madras" state of Tamil Nadu and the Union territory of Pondichery to be known as the Bar Council of Madras.

ccc. (Note:- Subs. by Act 18 of 1987, sec.21 for clause (ccc) as initially ins. by Regulation 8 of 1963, sec.12 and referred by Act 26 of 1968, sec.3 and Sch. And subsequently amended by Act 60 of 1973, sec.4) For the State of Maharashtra and Goa, and the Union territories of Dadra and Nagar Haveli and Daman and Diu, to be known as the Bar Council of Maharashtra and Goa.

(d) (Note:- Subs. by Act 53 of 1970, sec.24 for clause (d)) For the State of Punjab and Haryana, and the Union territory of Chandigarh to be known as the Bar Council of Punjab and Haryana.

dd. For the State of Himachal Pradesh to be known as the Bar Council of Himachal Pradesh.

(e) For the State of West Bengal and the [( Note:- Subs. by Act 81 of 1971, sec.34, for "Union Territories of Tripura and the Andaman and Nicobar Islands.") union territory of Andaman and Nicobar islands] to be known as the Bar Council of West Bengal and

(f) for the Union territory of Delhi to be known as the Bar Council of Delhi

(2) A State Bar Council shall consist of the following members, namely:-

a. In the case of the State Bar Council of Delhi, the Additional Solicitor General of India, ex officio [(Note:- Ins. by Act 60 of 1973, sec.4) in the case of the State Bar Council of Assam, Nagaland, Meghalaya, Manipur and Tripura, the Advocate-General of each of the State of Assam, Nagaland, Meghalaya, Manipur and Tripura, ex officio, inn the case of the State Bar Council Punjab and Haryana, ex officio] and in the case of any other State Bar Council, the Advocate-General of the State.

b. (Note:- Subs. by Act 60 of 1973, sec.4) In the case of a State Bar Council with an electorate not exceeding five thousand, fifteen members, in the case of a State Bar Council, with an electorate exceeding five thousand but not exceeding ten thousand, twenty members, and in the case of a State Bar Council with an electorate exceeding ten thousand, twenty-five members, elected in accordance with the system of proportional representation by means of the single transferable vote from amongst advocates on the electoral roll of the State Bar Council.

(Note:- Ins. by Act 21 of 1964, sec.2) Provided that as nearly as possible one half of such elected members shall, subject to any rules that may be made in this behalf by the Bar Council of India, be persons who have for at least ten years been advocates on a State roll, and in computing the said period of ten years in relation to any such person, there shall be included any period during which the person has been an advocate enrolled under the Indian Bar Councils Act, 1926 (38 of 1926).

(3) (Note:- Subs. by Act 38 of 1977, sec.2, for clause (3) as ins. by Act 107 of 1976, sec.3) There shall be a Chairman and a Vice-Chairman of each State Bar Council elected by the Council in such manner as may be prescribed.

(3-A) Every person holding office as Chairman or as Vice-Chairman of any State Bar Council immediately before the commencement of the Advocates (Amendment) Act, 1977, shall, on such commencement , cease to hold office as Chairman or Vice-Chairman, as the case may be:

Provided that every such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of each State Bar Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office.]

(4) (Note:- Ins. by Act 21 of 1964, sec.2) An advocate shall be disqualified from voting at an election under sub-section (2) or being chosen as, and for being a member of a State Bar Council, unless he possesses such qualifications or satisfies such conditions as may be prescribed in this behalf by the Bar Council of India, and subject to any such rules that may be

made, an electoral roll shall be prepared and revised from time to time by each State Bar Council.

5. Nothing in the proviso to sub-section (2) shall affect the term of office of any member elected before the commencement of the Advocates (Amendment) Act, 1964 but every election after such commencement shall be held in accordance with the provisions of the rules made by the Bar Council of India to give effect to the said proviso.]

(6) (Note Sub-clause (6) ins. by Act 60 of 1973, sec.4) Nothing in clause (b) of sub-section (2) shall affect the representation of elected members in any State Bar Council as constitute immediately before the commencement of the Advocates (Amendment) Act, 1973 (60 of 1973), until that State Bar Council is reconstituted in accordance with the provisions of this Act.]

**4. Bar Council of India.**-(1) There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely :-

a. the Attorney-General of India, ex-officio;

b. the Solicitor-General of India, ex-officio;

(Note:- Clause (bb) omitted by Act 38 of 1977, sec.4)

c. one member elected by each State Bar Council from amongst its members.

[(1A) (Note:- Ins. by Act 60 of 1973, sec.5) No person shall be eligible for being elected as a member of the Bar Council of India unless he possesses the qualification specified in the proviso to sub-section (2) of Section 3];

(2) (Note:- Subs. by Act 38 of 1977, sec.3) There shall be a Chairman and a Vice-Chairman of the Bar Council of India elected by the Council in such manner as may be prescribed.

(2A) A person holding office as Chairman and a Vice-Chairman of the Bar Council of India immediately before the commencement of the Advocates (Amendment) Act, 1977, shall on such commencement, cease to hold office Chairman or Vice-Chairman, as the case may be:

Provided that such person shall continue to carry on the duties of his office until the Chairman or the Vice-Chairman, as the case may be, of the Council, elected after the commencement of the Advocates (Amendment) Act, 1977, assumes charge of the office.]

[(3) (Note:- Ins. by Act 21 of 1964, sec.3) The term of office of a member of the Bar Council of India elected by the State Bar Council shall,-

i. In the case of a member of a State Bar Council who holds ex-officio, be two years from the date of his election (Note:- Ins. by Act 60 of 1973, sec.5) [or till he ceases to be a member of the State Bar Council, whichever is earlier];and

(ii) In any other case, be for the period for which he holds office as member of the State Bar Council :

Provided that every such member shall continue to hold as member of the Bar Council of India until his successor is elected.

**5. Bar Council to be body corporate.**- Every Bar Council shall be a body corporate having perpetual succession and a common seal, with power to acquire and hold property, both movable and immovable, and to contract, and may by the name by which it is known sue and be sued.

**6.Functions of State Bar Councils**-(1) The functions of a State Bar Council shall be-

(a) to admit persons as advocates on its roll.

b. to prepare and maintain such roll

(c ) to entertain and determine cases of misconduct against advocates on its roll

(d) to safeguard the rights, privileges and interest of advocates on its roll

dd. (Note:- Ins. by Act 70 of 1993, sec.2 (i) (a)) to promote the growth of Bar Associations for the purpose of effective implementations of the welfare schemes referred to in clause (a) of sub section (2) of this section and clause (a) of sub section (2) of section

(e) to promote and support law reform

ee. (Note:- Ins. by Act 60 of 1973, sec.6) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest.

(eee) to organise legal aid to the poor in the prescribed manner

f. to manage and invest the funds of the Bar Council

(g) to provide for the election of its members.

gg. (Note:- Ins. by Act 70 of 1993, sec.2 (I) (b)) to visit and inspect Universities in accordance with the directions given under clause (I) of sub-section (1) of section7;

(h) to perform all other functions conferred on it by or under this Act;

(i) to do all other things necessary for discharging the aforesaid functions

(2) [(Note:- Sub-sections (2) and (3) subs. by Act 60 of 1973, sec.6, for sub-section (2).) A State Bar Council may constitute one or more funds in the prescribed manner for the purpose of].

a. Giving financial assistance to organise welfare scheme for the indigent, disabled or other advocates.

b. Giving legal aid or advice in accordance with the rules made in this behalf

c. [(Note:- Ins. by Act 70 of 1993, sec.2 (ii).) Establishing law libraries].

(3) A State Bar Council may receive any grants, donations, gifts or benefactions for all or any of the purposes specified in sub-section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section

**7. Functions of Bar Council of India** - (Note:- Section 7 renumbered as sub-section (1) thereof by Act 60 of 1973, Sec.7) (1) The functions of the Bar council of India shall be

a. (Note:- Clause (a) omitted by Act 60 of 1973, sec.7)

(b) to lay down standards of professional conduct and etiquette for advances.

c. To lay down the procedure to be followed by its disciplinary committee and the disciplinary committee of each State Bar Council

d. To safeguard the rights, privileges and interest of advocates

e. To promote and support law reform

f. To deal with and dispose of any matter arising under this Act, which may be referred to it by a State Bar Council.

g. To exercise general supervision and control over State Bar Councils

h. To promote legal education and to lay down standards of such education in consultation with the Universities in India imparting such education and the State Bar Councils

i. To recognize Universities whose degree in law shall be a qualification for enrolment as an advocate and for that purpose to visit and inspect Universities (Note:- Ins. by Act 70 of 1993,

sec.3(l)) (or cause the State Bar Councils to visit and inspect Universities in accordance with such directions as it may give in this behalf).

(ia) (Note:- Ins. by Act 60 of 1973, sec.7) to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest.

(ib) to organise legal aid to the poor in the prescribed manner

(ic) to recognise on a reciprocal basis foreign qualifications in law obtained outside India for the purpose of admission as advocate under this act.

j. to manage and invest the funds of the Bar Council

k. to provide for the election of its members

l. to perform all other functions conferred on it by or under this Act

m. to do all other things necessary for discharging the aforesaid functions:

(2) (Note:- Sib-section (2) and (3) ins. by Act 60 of 1973, sec.7) the Bar Council of India may constitute one or more funds in the prescribed manner for the purpose of -

(a) giving financial assistance to organize welfare schemes for indigent, disabled or other advocates.

(b) giving the legal aid or advice in accordance with the rules made in this behalf

(c) (Note:- Ins. by Act 70 of 1993, sec.3 (ii).) establishing law libraries

(3) That Bar Council of India may receive any grants, donations, gifts or benefactions for all or any of the purpose specified in sub section (2) which shall be credited to the appropriate fund or funds constituted under that sub-section.

7A. (Note:- Ins. by Act 60 of 1973, sec.8) Membership in international bodies-The Bar Council of India may become a member of international legal bodies such as the International Bar Associations or the International Legal Aid Association, contributes such sums as it thinks fit to such bodies by way of subscription or otherwise and authorise expenditure on the participation of its representatives in any international legal conference or seminar.

8. (Note:- Subs. by Act 70 of 1993, sec.4) Term of office of Members of State Bar Council- The term of office of an elected member of a State Bar Council (other than an elected member thereof referred to in section 54) shall be five years from the date of publication of the result of his election.

Provided that where a State Bar Council fails to provide for the election of its members before the expiry of the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extended the said term, the Bar Council of India may, by order for reasons to be recorded in writing, extend the said term, the Bar Council of India may, by order, for reasons to be recorded in writing, extend the said term for a period not exceeding six months.

8A. Constitution of Special Committee in the absence of election:--(1) Where a State Bar Council fails to provide for the election of its members before the expiry of the term of five years or the extended term, as the case may be, referred to in section 8, the Bar council of India shall, on and from the date immediately following the day of such expiry, constitute a Special Committee consisting of ---

a. The ex officio member of the State Bar Council referred to in clause (a) of sub ? section (2) of section 3 to be the Chairman:

Provided that where are more than one ex officio members, the senior-most amongst them shall be the Chairman, and

(ii) Two members to be nominated by the Bar Council of India from amongst the advocates on the electoral roll of the State Bar Council, to discharge the functions of the State Bar Council until the Bar Council is constituted under this Act.

2. On the constitution of the Special Committee and until the State Bar Council is constituted.

a. all properties and assets vesting in the State Bar Council shall vest in the Special Committee:

b. all rights, liabilities and obligations of the State Bar Council, whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations of the Special committee;

c. all proceedings pending before the State Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the Special committee.

2. The Special Committee constituted under sub-section (1) shall, in accordance with such directions as the Bar Council of India may give to it in this behalf, hold elections to the State Bar Council within a period of six months from the date of its constitution under sub-section (1), and where, for any reason the Special Committee is not in a position to conduct election within the said period of six months, the Bar Council of India may, for reasons to be recorded by it in writing, extend the said period]

**9. Disciplinary Committees.-** (1) A Bar Council shall constitute one or more disciplinary committees, each of which shall consist of three persons of whom two shall be a person co-opted by the Council from amongst its members and the other shall be a person co-opted by the Council from amongst advocates who possess the qualifications specified in the proviso to sub-section (2) of Section 3 and who are not members of the Council, and the senior-most advocate amongst the members of a disciplinary committee shall be the Chairman thereof.

(2) Notwithstanding anything contained in sub-section (1), any disciplinary committee constituted prior to the commencement of the Advocates (Amendment) Act, 1964, (21 of 1964) may dispose of the proceeding pending before it as if this section had not been amended by the said Act.

9A. (Note:- Ins. by Act 60 of 1973, sec.9) Constitution of legal aid Committees. (1) A Bar Council may constitute one or more legal aid committees each of which shall consist of such number of members, not exceeding nine but not less than five, as may be prescribed].

(2) The qualifications, the method of selection and the term of office of the members of a legal aid committee shall be such as may be prescribed.

**10. Constitution of committees other than disciplinary committees.-** (1) A State Bar Council shall constitute the following standing committees, namely:-

(a) an executive committee consisting of five members elected by the Council from amongst its members;

(b) an enrolment committee consisting of three members elected by the Council from amongst its members.

(2) The Bar Council of India shall constitute the following standing committees, namely :--

(a) an executive committee consisting of nine members elected by the Council from amongst its members;

(b) a legal education committee consisting of ten members, of whom five shall be persons elected by the Council from amongst its members and five shall be persons co-opted by the Council who are not members thereof.

(3) A State Bar Council and the Bar Council of India may constitute from amongst its members such other committees as it may deem necessary for the purposes of carrying out the provisions of this Act.



10A. (Note:- Ins. by Act 60 of 1973, sec.10) Transaction of business by Bar Councils and committees thereof.?(1) (Note:- Subs. by Act 70 of 1993, sec.5) The Bar council of India shall meet at New Delhi or at such other place as it may, for reasons to be recorded in writing, determine,]

(2) A State Bar Council shall meet at its headquarters or at such other place as it may, for reasons to be recorded in writing, determine .]

(3) The committees other than disciplinary committees constituted by the Bar Councils shall meet at the headquarters of the respective Bar councils.

(4) Every Bar Council and every committee thereof except the disciplinary committees shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

(5) The disciplinary committees constituted under section 9 shall meet at such times and places and shall observe such rules of procedure in regard to the transaction of business at their meetings as may be prescribed.

10B. (Note:- Original section 10A renumbered as section 10B by Act 60 of 1973, sec.10.) Disqualification of members of Bar Council. ?An elected member of a Bar Council shall be deemed to have vacated his office if he is declared by the Bar Council of which he is a member to have been absent without sufficient excuse from three consecutive meetings of such Council, or if his name is, for any cause removed from the roll of advocates or if he is otherwise disqualified under any rule made by the Bar Council of India.

**11. Staff of Bar Council.-** (1) Every Bar Council shall appoint a Secretary and may appoint an accountant and such number of other persons on its staff as it may deem necessary.

(2) The secretary and the accountant, if any, shall possess such qualifications as may be prescribed.

**12.Accounts and audit. -** (1) Every Bar Council shall cause to be maintained such books of accounts and other books in such form and in such manner as manner as may be prescribed.

(2) The accounts of a Bar council shall be audited by auditors duly qualified to act as auditors of companies under the Companies Act, 1956 (1 of 1956), at such times and in such manner as may be prescribed.

(3) (Note:- Subs. by Act 60 of 1973, sec.11) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following, a State Bar Council shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Bar Council of India and shall cause the same to be published in the Official Gazette.

(4) As soon as may be practicable at the end of each financial year, but not later than the 31st day of December of the year next following the Bar Council of India shall send a copy of its accounts together with a copy of the report of the auditors thereon to the Central government and shall cause the same to be published in the Gazette of India.

**13. Vacancies in Bar Councils and Committees thereof not to invalidate action taken.-** No act done by a Bar Council or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of the council or committee, as the case may be.

**14. Election to Bar Councils not to be questioned on certain grounds.-** No election of a member to a Bar Council shall be called in question on the ground merely that due notice thereof has not been given to any person entitled to vote thereat , if notice of the date has, not less than thirty days before that date, been published in the Official Gazette.

**15. Power to make rules,-** (1) A Bar Council may make rules to carry out the purposes of this chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for?

a. (Note:- Subs. by Act 60 of 1973, sec.12) the election of members of the Bar Council by secret ballot including the conditions subject to which persons can exercise the right to vote by postal ballot , the preparation and revision of electoral rolls and the manner in which the results of elections shall be published];

b. (Note:- Clause (b) omitted by Act 60 of 1973, sec.12)

c. (Note:- Clause (c) ins. by Act 38 of 1977, sec.5) the manner of election of the Chairman and the Vice-Chairman of the Bar council];

d. the manner in which and the authority by which doubts and disputes as to the validity of an election to the Bar Council [(Note:- Ins. by Act 38 of 1977, sec.5)or to the office of the Chairman or Vice- Chairman] shall be finally decided;

e. (Note:- Clause (e) omitted by Act 23 of 1966, sec.3)

f. the filling of casual vacancies in the Bar Council ;

g. the power and duties of the Chairman and the Vice- Chairman of the bar Council ;

(ga) (Note:- Clause (ga) and (gb) ins. by Act 60 of 1973, sec.12) the constitution of one or more funds by a Bar Council for the purpose of giving financial assistance or giving legal aid or advice referred to in sub- section (2) of section 6 and sub- section (2) of section 7;

(gb) Organisation of legal aid and advice to the poor, constitution and functions of committees and sub-committees for that purpose and description of proceedings in connection with which legal aid or advice may be given];

h. the summoning and holding of meetings of the Bar Council, [\*\*\*] the conduct of business thereat, and the number of members necessary to constitute a quorum;

i. the constitution and functions of any committee of the Bar council and the term of office of members of any such committee;

j. the summoning and holding of meetings, the conduct of business of any such committee, and the number of members necessary to constitute a quorum;

k. the qualifications and the conditions of service of the secretary, the accountant and other employees of the Bar Council;

l. the maintenance of books of accounts and other books by the Bar council;

m. the appointment of auditors and the audit of the accounts of the Bar council;

n. the management and investment of the funds of the Bar council

(3) No rules made under this section by a State Bar Council shall have effect unless they have been approved by the Bar Council of India.

## **THE ADVOCATES ACT,1961**

(Act no. 25 of 1961)

### **CHAPTER III-ADMISSION AND ENROLMENT OF ADVOCATES**

**16. Senior and other advocates,-** (1) there shall be two classes of advocates, namely , senior advocates and other advocates.

(2) An advocate may, with his consent, be designated as senior advocate if the Supreme Court or a High Court is of opinion that by virtue of his ability[ standing at the Bar or special knowledge or experience in law] he is deserving of such distinction.

(3) Senior advocates, shall in the matter of their practice, be subject to such restrictions as the Bar Council of India may, in the interest of the legal profession, prescribe.

(4) An advocate of the Supreme Court who was senior advocate of that Court immediately before the appointed day shall, for the purposes of this section, be deemed to be a senior advocate ;

[(Note:- Added by Act 21 of 1964, sec.8) Provided that where any such senior advocate makes an application before the 31st December, 1965, to the Bar council maintaining the roll in which his name has been entered that he does not desire to continue as a senior advocate, the Bar Council may grant the application and the roll shall be altered accordingly].

**17. State Bar Councils to maintain roll of advocates-** (1) Every State Bar Council, shall prepare and maintain a roll of advocates in which shall be entered the names and address of ?

(a) all persons who were entered as advocates on the roll of any High Court under the Indian Bar Councils Act, 1926 (38 of 1926) immediately before the appointed day [(Note:- Subs. by Act 60 of 1973, sec.14, for the work "and who within the prescribed time".) including persons, being citizens of India, who before the 15th day of August, 1947, were enrolled as advocates under the said Act in any area which before the said date was comprised within India as defined in the Government of India Act, 1935, and who at any time] express an intention in the prescribed manner to practice within the jurisdiction of the Bar Councils.

(b) all other persons who are admitted to be advocates on the roll of the State Bar Council under this Act on or after the appointed day.

(2) Each such roll of advocates shall consist of two parts, the first part containing the names of senior advocates and the second part, the names of other advocates.

(3) Entries in each part of the roll of advocates prepared and maintained by a State Bar Council under this section shall be in the order of seniority, [(Note:- Subs. by Act 21 of 1964, sec.9, for the words "and, such seniority shall be determined".) and, subject to any rule that may be made by the Bar council of India in this behalf, such seniority shall be determined] as follows-

a. the seniority of an advocate referred to in clause (a) sub section (1) shall be determined in accordance with his date of enrolment under the Indian Bar Council Act, 1926 (38 of 1926)

b. the seniority of any person who was a senior advocate of the Supreme Court immediately before the appointed day, shall, for the purpose of the first part of the State roll, be determined in accordance with such principles as the Bar Council of India may specify.

c. (Note:- Clause (c) omitted by Act 60 of 1973, sec.14).

d. the seniority of any other person who, on or after the appointed day, is enrolled as a senior advocate or is admitted as an advocate shall be determined by the date of such enrolment or admission, as the case may be .

e. (Note:- Ins. by Act 47 of 1980, sec.2) Notwithstanding anything contained in clause (a) the seniority of an attorney enrolled (whether before or after the commencement of the Advocates (Amendment) Act, 1980 as an advocate shall be determined in accordance with the date of his enrolment as an attorney.

(4) no person shall be enrolled as an advocate on the roll of more than one State Bar Council.

**18. Transfer of name from one State roll to another-** (1) Notwithstanding anything contained in section, 17 any person whose name is entered as an advocate on the roll of any State Bar Council may make an application in the prescribed form to the Bar Council of India for the transfer of his name from the roll of that State Bar Council to the roll of any other State Bar Council and, on receipt of any such application the Bar Council of India shall direct that name of such person shall without the payment of any fee, be removed from the roll of the first mentioned State Bar Council and entered in the roll of the other State Bar Council and the State Bar Councils concerned shall comply with such direction.

[(Note:- Added by Act 21 of 1964, sec.10) Provided that where any such application for transfer is made by a person, against whom any disciplinary proceedings is pending or where for any other reason it appears to the Bar Council of India that the application for transfer has not been made bona fide and that the transfer should not be made, the Bar Council of India may, after giving the person making the application an opportunity of making a representation in this behalf, reject the application.]

(2) For the removal of doubts it is hereby declared that where on an application made by an advocate under sub section (1) his name is transferred from the roll of one State Bar Council to that of another, he shall retain the same seniority in the latter roll to which he was entitled in the former roll.

**19. State Bar Councils to send copies of rolls of advocates to the Bar Council of India-**

Every State Bar Council shall send to the Bar Council of India an authenticated copy of the roll of advocates prepared by it for the first time under this Act and shall thereafter communicate to the Bar Council of India all alterations in, the addition to, any such roll, as soon as the same have been made.

20. (Note:- Subs. by Act 60 of 1973, sec.15) Special provision for enrolment of certain Supreme Courts Advocates-(1) Notwithstanding anything contained in this Chapter, every advocate who is entitled a of right to practice in the Supreme Court immediately before the appointed day and whose name is not entered in any State roll may, within the prescribed time, express his intention in the prescribed form to the Bar Council of India for the entry of his name in the roll of a State Bar Council and on receipt thereof the Bar Council of India shall direct that the name of such advocate shall, without payment of any fee, be entered in the roll of that State Bar Council, and the State Bar Council concerned shall comply with such direction.

(2) Any entry in the State roll made in compliance with the direction of Bar Council of India under sub-section (1) shall be made in the order of seniority determined in accordance with the provisions of sub-section (3) of section 17.

(3) Where an advocate referred to in sub-section (1) omits or fails to express his intention within the prescribed time, his name shall be entered in the roll of the State Bar Council of Delhi.

**21. Disputes regarding seniority-** (1) Where the date of seniority of two or more persons is the same, the one senior in age shall be reckoned as senior to the other.

(2) [(Note:- Subs. by Act 60 of 1973, sec.16) Subject as aforesaid, if any dispute arises with respect to the seniority of any person, it shall be referred to the State Bar Council concerned for decision.]

22. [(Note:- Subs. by Act 60 of 1973, sec.16) Certificate of enrolment- (1) There shall be issued a certificate of enrolment in the prescribed form by the State Bar Council to every person whose name is entered in the roll of advocates maintained by it under this Act.

(2). Every person whose name is so entered in the State roll shall notify any change in the place of his permanent residence to the State Bar Council concerned within ninety days of such change.]

**23. Right of pre-audience-** (1) The Attorney General of India shall have pre-audience over all other advocates.

(2) Subject to the provision of sub- section (1), the Solicitor General of India shall have pre-audience over all other advocates.

(3) Subject to the provision of sub section (1) and (2), the Additional Solicitor General of India shall have pre-audience over all other advocates.

[(3A) (Note:- Ins. by Act 47 of 1980, sec.3) Subject to the provision of sub-sections (1), (2), (3) the second Additional Solicitor-General and (3A) the Advocate General of India shall have pre-audience over all other advocates]

(4) Subject to the provisions of sub section (1), [(Note:- Subs. by Act 47 of 1980, sec.3, for the brackets, figures and work "(2) and (3)" (2), (3) and (3A)] the Advocate-General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocates General inter se shall be determined by their respective seniority.

(5) Subject as aforesaid-

(i) senior advocates shall have pre-audience over other advocates and

(ii) the right of pre-audience over senior advocates inter se and other advocates inter se shall be determined by their respective seniority.

**23. Right of pre-audience-** (1) The Attorney General of India shall have pre-audience over all other advocates.

(2) Subject to the provision of sub- section (1), the Solicitor General of India shall have pre-audience over all other advocates.

(3) Subject to the provision of sub section (1) and (2), the Additional Solicitor General of India shall have pre-audience over all other advocates.

[(3A) (Note:- Ins. by Act 47 of 1980, sec.3) Subject to the provision of sub-sections (1), (2), (3) the second Additional Solicitor-General and (3A) the Advocate General of India shall have pre-audience over all other advocates]

(4) Subject to the provisions of sub section (1), [(Note:- Subs. by Act 47 of 1980, sec.3, for the brackets, figures and work "(2) and (3)" (2), (3) and (3A)] the Advocate-General of any State shall have pre-audience over all other advocates, and the right of pre-audience among Advocates General inter se shall be determined by their respective seniority.

(5) Subject as aforesaid-

(i) senior advocates shall have pre-audience over other advocates and

(ii) the right of pre-audience over senior advocates inter se and other advocates inter se shall be determined by their respective seniority.

**24. Persons who may be admitted as advocates on a State roll.-** (1) Subject to the provisions of this Act. And rules made thereunder, a person shall be qualified to be admitted as an advocate on a State roll, if he fulfills the following conditions, namely:-

a. he is a citizen of India:

Provided that subject to the other provisions contained in the Act, a national of any other country may be admitted as an advocate on a State roll, if citizens of India, duly qualified, are permitted to practice law in that other country.

b. he has completed the age of twenty-one years.

(c) he has obtained a degree in law-

i. before the [(Note:- Subs. by Act 60 of 1973, sec.18, for the words "28th day of February, 1963" 12th day of March, 1967] from any University in the territory of India, or

ii. before the 15th August, 1947, from any University in any area which was comprised before that date within India as defined by the Government of India Act, 1935, or

iii. [Note:- Subs. by Act 60 of 1973, sec.18, for clause (iii)) after the 12th day of March, 1967, save as provided in sub clause after undergoing a three years course of study in law from any University in India which is recognised for the purpose of this Act by the Bar Council of India, or

(iiia) after undergoing a course of study in law, the duration of which is not less than two academic years commencing from the academic year 1967-98 or any earlier academic year from any University in India which is recognised for the purpose of this Act by the Bar Council of India, or]

[(Note:- Subs. by Act 60 of 1973, sec.18, for the words "he is a barrister".) he is barrister and is called the Bar and on before the 31st day of December, 1976 [(Note:- Ins. by Act No.107 of 1976, sec.6) "or has passed the articulated clerks" examination or any other examination specified by the High Court at Bombay or Calcutta for enrolment as an attorney of that High Court] or has obtained such other foreign qualification in law as is recognised by the Bar Council of India for the purpose of admission as an advocate under this Act.]

iv. (Note:- Ins. by Act 21 of 1964 sec.13) In any other case, from any University outside the territory of India, if the degree is recognised for the purpose of this Act by the Bar Council of India or

(d) (Note:- Clause (d) omitted by Act 60 of 1973, sec.18)

e. he fulfills such other conditions as may be specified in the rules made by the State Bar Council under this Chapter.

f. [(Note:- Clause (f) subs. by Act 60 of 1973, sec.18) he has paid, in respect of the enrolment, stamp duty, if any, chargeable under the Indian Stamp Act, 1899, and an enrolment fee payable to the State Bar Council of [(Note:- Subs. by Act 70 of 1993, sec.6) six hundred rupees and to the Bar Council of India, one hundred and fifty rupees by way of a bank draft drawn in favour of that Council.]

Provided that where such person is a member of the Schedule Castes or the Scheduled Tribes and produces a certificate to the effect from such authority as may be prescribed, the enrolment fee payable by him to the State Bar Council shall be [(Note:- Subs. by Act 70 of 1993, sec.6) one hundred rupees and to the Bar Council of India, twenty-five rupees.]

[Explanation - (Note:- Ins. by Act 14 of 1962, sec.2) For the purpose of this sub-section, a person, shall be deemed to have obtained a degree in law from a University in India on the date on which the results of the examination for that degree are published by the University on its notice-board or otherwise declaring him to have passed that examination.]

(2) Notwithstanding anything contained in sub-section (1) [(Note:- Subs. by Act 21 of 1964, sec.13, for certain words.) a vakil or a pleader who is a law graduate] may be admitted as an advocate on a State roll, if he-

a. makes an application for such enrolment in accordance with the provisions of this Act, not later than two years from the appointed day, and

b. fulfills the conditions specified in clauses (a), (b) and (f) of sub-section (1).

(3) [(Note:- Sub-sections (3) and (4) ins. by Act 21 of 1964, sec.13) Notwithstanding anything contained in sub-section (1) a person who-

a. (Note:- The words "before the 31st day of March, 1964 and then in force" omitted by Act 33 of 1968, sec.2) has, for at least three years, been a vakil or a pleader or a mukhtar or was entitled at any time to be enrolled under any law (Note:- The words "before the 31st day of March, 1964 and then in force" omitted by Act 33 of 1968, sec.2) as an advocate of a High Court (including a High Court of a former Part B State) or of a Court of Judicial Commissioner in any Union territory, or

aa. [(Note:- Sub-clause (aa) ins. by Act 60 of 1973, sec.18) before the 1st day of December, 1961 was entitled otherwise than as an advocate to practice the profession of law (whether by way of

pleading or acting or both) by virtue of the provisions of any law, or who would have been so entitled had he not been in public service on the said date or.

a. [(Note:- Sub-clause (b) omitted by Act 60 of 1973, sec.18)].

b. Court in any area which was comprised within Burma as defined in the Government of India Act, 1935 or

c. is entitled to be enrolled as an advocate under any rule made by the Bar Council of India in this behalf,

may be admitted as an advocate on a State roll if he-

(i) makes an application for such enrolment in accordance with the provisions of this Act, and

i. fulfills the conditions specified in clauses (a), (b), (e) and (f) of sub-section (1).

1. [(Note:- Sub-section (4) omitted by Act 107 of 1976, sec.6)]

24 A. (Note:- Ins. by Act 60 of 1973, sec.19) Disqualification for enrolment - (1) No person shall be admitted as an advocate on a State roll-

a. if he is convicted of an offence involving moral turpitude.

b. If he is convicted of an offence under the provisions of the Untouchability (Offences) Act, 1955.

c. (Note:- Ins. by Act 70 of 1993, sec.7) If he is dismissed or removed from employment or office under the State or any charge involving moral turpitude.

Explanation- In this clause, the expression "State" shall have the meaning assigned to it under article 12 of the Constitution.

Provided that the disqualification for enrolment as aforesaid shall cease to have effect after a period of two years has elapsed since his [(Note:- Subs. by Act 70 of 1993, sec.7) release or dismissal or, as the case may be, removal.]

(2) Nothing contained in sub-section (1) shall apply to a person who having been found guilty is dealt with under the provision of the Probation of Offenders Act, 1958 (20 of 1958)

**26. Disposal of an application for admission as an Advocate-** (1) A State Bar Council shall refer every application for admission as an advocate to its enrolment committee, and subject to the provision of sub section (2) and (3), [(Note:- Ins. by Act 21 of 1964, sec.14) and to any direction that may be given in writing by the State Bar Council in this behalf] such committee shall dispose of the application in the prescribed manner.

[(Note:- Proviso added by Act 21 of 1964, sec.14) Provided that the Bar Council of India may, if satisfied, either on a reference made to it in this behalf or otherwise, that any person has got his name entered on the roll of advocates by misrepresentation as to an essential fact or by fraud or undue influence, remove the name of such person from the roll of advocates after giving him an opportunity of being heard.]

(2) Where the enrolment committee of a State Bar Council proposes to refuse any such application, it shall refer the application for opinion to the Bar Council of India and every such reference shall be accompanied by a Statement of the grounds in support of its refusal of the application.

(3) The enrolment committee of a State Bar Council shall dispose of any application referred to the Bar Council of India under sub-section (2) in conformity with the opinion of the Bar Council of India.

(4) [(Note:- Ins. by Act 21 of 1964, sec.14) Where the enrolment committee of a State Bar Council has refused any application for admission as an advocate on its roll, the State Bar Council shall as soon as may be, send intimation to all other State Bar Councils about such refusal stating the name, address and qualifications of the person whose application was refused and the grounds for the refusal.]

26A. [(Note:- Subs. by Act 60 of 1973, sec.20) Power to remove names from roll - A State Bar Council may remove from the State the roll the name of any advocate who is dead or from whom a request has been received to that effect.]

**27. Application once refused not to be entertained by another Bar Council except in certain circumstances-** Where a State Bar Council has refused the application of any person for admission as an advocate on its roll, no other State Bar Council shall entertain an application for admission of such persons as an advocate on its roll, except with the previous consent in writing of the State Bar Council which refused the application and of the Bar Council of India.

28. Power to make rules- (1) A State Bar Council may make rules to carry out the purposes of this chapter.

(2) In particular, and without prejudice to the generally of the foregoing power, such rules may provide for-

a. [(Note:- Clause (a) subs. by Act 60 of 1973, sec.21) the time within which and form in which an advocate shall express his intention for the entry of his name in the roll of a State Bar Council under Section 20.]

b. [(Note:- Clause (b) omitted by Act 60 of 1973, sec.21)]

c. the form in which an application shall be made to the Bar Council for admission as an advocate on its roll and the manner in which such application shall be disposed of by the enrolment committee of the Bar Council

d. the conditions subject to which a person may be admitted as an advocate on any such roll.

e. The installments in which the enrolment fee may be paid

(3) No rules made under this Chapter shall have effect unless they have been approved by the Bar Council of India

## **THE ADVOCATES ACT, 1961**

(Act no. 25 of 1961)

### **CHAPTER IV-RIGHT TO PRACTICE**

**29. Advocates to be the only recognized class of persons entitled practice law-** Subject to the provision of this Act and any rules made thereafter, there shall, as from the appointed day, be only one class of persons entitled to practice the profession of law, namely, advocates.

**31. Special provision for attorney-** (Omitted by the Advocates (Amendment) Act, 1967 (107 of 1976), Sec. 7)

**32. Power of Court to permit appearance in particular cases-** Notwithstanding anything contained in this Chapter, any court, authority, or person may permit any person, not enrolled as an advocate under this Act, to appear before it or him in any particular case.

**33. Advocates alone entitled to practice-** Except as otherwise provided in this Act or in any other law for the time being in force, no person shall, on or after the appointed day, be entitled to practice in any court or before any authority or person unless he is enrolled as an advocate under this Act.



**34. Power of High Courts to make rules-** (1) The High Court may make rules laying down the conditions subject to which an advocate shall be permitted to practice in the High Court and the courts subordinate thereto.

(1A) The High Court shall make rules for fixing and regulating by taxation or otherwise the fees payable as costs by any party in respect of the fees of his adversary's advocate upon all proceedings in the High Court or in any Court subordinate thereto.

2. Without prejudice to the provisions contained in sub section (1), the High

Court at Calcutta may make rules providing for the holding of the Intermediate and the Final examinations for articles clerks to be passed by the person referred to in section 58AG for the purpose of being admitted as advocates on the State roll and any other matter connected therewith.

## **THE ADVOCATES ACT, 1961**

(Act no. 25 of 1961)

### **CHAPTER V-CONDUCT OF ADVOCATES**

**35. Punishment of advocates for misconduct-** (1) Where on receipt of a complaint or otherwise a State Bar Council has reason to believe that any advocate on its roll has been guilty of professional or other misconduct, it shall refer the case for disposal of its disciplinary committee.

(1A) [(Note:- Sub-section (1-A) ins. by Act 60 of 1973, sec.24) The State Bar Council may, either of its own motion or on application made to it by any person interested, withdraw a proceeding pending before its disciplinary committee and direct the inquiry to be made by any other disciplinary committee of that State Bar Council.]

(2) The disciplinary committee of a State Bar Council (Note:- Certain words omitted by Act 60 of 1973, sec.24) shall fix a date for the hearing of the case a notice thereof to be given to the advocate concerned and to the Advocate General of the State.

(3) The disciplinary committee of a State Bar Council after giving the advocate concerned and the Advocate General an opportunity of being heard, may make any of the following orders, namely-

a. Dismiss the complaint or, where the proceedings were initiated at the instance of the State Bar Council, direct that the proceedings be filed.

b. Reprimand the advocate

(c) Suspend the advocate from practice for such periods as it may deem fit.

(d) Remove the name of the advocate from the State roll of advocates

(4) Where an advocate is suspended from practice under clause (c) of sub section (3) he shall, during the period of suspension, be debarred from practicing in any court or before any authority or person in India.

(5) Where any notice is issued to the Advocate-General under sub-section (2) the Advocate General may appear before the disciplinary committee of the State Bar Council either in person or through any advocate appearing on his behalf.

[Explanation - (Note:- Ins. by Act 21 of 1964, sec.17) In this section, [(Note:- Ins. by Act 60 of 1973, sec.24) section 37 and section 38] the expression "Advocate-General" and "Advocate-General of the State" shall, in relation to the Union territory of Delhi, mean the Additional Solicitor General of India.]

**36. Disciplinary powers of Bar Council of India-** (1) Where on receipt of a complaint or otherwise the Bar Council of India has reason to believe that any advocate (Note:- The words "on the common roll" omitted by Act 60 of 1973, sec.25) whose name is not entered on any State roll

has been guilty of professional or other misconduct, it shall be refer the case for disposal to its disciplinary committee.

(2) Notwithstanding anything contained in this Chapter, the disciplinary committee of the Bar Council of India may, [(Note:- Subs. by Act 60 of 1973, sec.25, for the words "of its own motion".) either of its own motion or on a report by any State Bar Council or an application made to it by any person interested] withdraw for inquiry before itself any proceedings for disciplinary action against any advocate pending before the disciplinary committee of any State Bar Council and dispose of the same.

(3) The disciplinary committee of the Bar Council of India disposing of any case under this section, shall observe, so far as may be, the procedure laid down in Section 35, the references to the Advocate-General in that section being construed as references to the Attorney-General of India.

(4) In disposing of any proceedings under this section the disciplinary committee of the Bar Council of India may make any order which the disciplinary committee of a State Bar Council can make under sub-section (3) of section, 35 and where any proceedings have been withdrawn for inquiry [(Note:- Subs. by Act 60 of 1973, sec.26) before the disciplinary committee of the Bar Council of India] the State Bar Council concerned shall give effect to any such order.

36A. [(Note:- Ins. by Act 60 of 1973, sec.26) Changes in constitution of disciplinary committee- Whenever in respect of any proceedings under Section 35 or Section 36, a disciplinary committee of the State Bar Council or a disciplinary committee of the Bar Council of India ceases to exercise jurisdiction and is succeeded by another committee which has and exercise jurisdiction , the disciplinary committee of the State Bar Council or the may continue the proceedings from the stage at which the proceedings were so left by its predecessor committee.

36B. Disposal of disciplinary proceedings- (1) The disciplinary committee of a State Bar Council shall dispose of the complaint received by it under Section 35 expeditiously and in each cash the proceedings shall be concluded within a period of one year from the date of the receipt of the complaint or the date of initiation of the proceedings at the instance of the State Bar Council, as the case may be, failing which such proceedings shall stand transferred to the Bar Council of India which may dipose of the same as if it were a proceeding withdrawn for inquiry under sub section (2) of section 36.

(2) Notwithstanding anything contained in sub section (1) where on the commencement of the Advocates (Amendment) Act, 1973, any proceedings in respect of any disciplinary matter against an advocate is pending before the disciplinary committee of a State Bar Council, that disciplinary committee of the State Bar Council shall dispose of the same within a period of six months from the date of such complaint, or, as the case may be, the date of initiation of the proceedings at the instance of the State Bar Council, whichever is later, failing which such other proceeding shall stand transferred to the Bar Council of India for disposal under sub-section.

**38. Appeal to the Supreme Court** - Any person aggrieved by an order made by the disciplinary committee of the Bar Council of India under Section 36 or Section 37 [(Note:- Ins. by Act 60 of 1973, sec.27) or the Attorney-General of India or the Advocate-General of the State concerned as the case may be], within sixty days of the date on which the order is communicated to him, prefer an appeal to the Supreme Court and the Supreme Court may pass such order [(Note:- Ins. by Act 60 of 1973, sec.27) including an order varying the punishment awarded by the disciplinary committee of the Bar Council of India] thereon as it deems fit :

[(Note:- Ins. by Act 60 of 1973, sec.28) Provided that no order of the disciplinary committee of the Bar Council of India shall be varied by the Supreme Court so as to prejudicially affect the person aggrieved without giving him a reasonable opportunity of being heard.]

Comments: In an appeal under Section 38 of the Act this Court would not, as a general rule, interfere with the concurrent @page-SC113 finding of fact by the Disciplinary Committee of the Bar Council of India and the State Bar Council unless the finding is based on no-evidence or it

proceeds on mere conjectures and surmises. Finding in such disciplinary proceedings must be sustained by a higher degree of proof than that required in civil suits, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There should be convincing preponderance of evidence. Pandurang Dattatraya Khandekar v. The Bar Council of Maharashtra, AIR 1984 SUPREME COURT 110

39. [(Note:- Subs. by Act 60 of 1973, sec.29) Application of sections 5 and 12 of Limitation Act, 1963. ? The provisions of sections 5 and 12 of the Limitation Act, 1963, shall, so far as may be, apply to appeals under Section 37 and Section 38.]

**40. Stay of order.-** [(1) (Note:- Section 40 renumbered as sub-section (1) thereof and sub-section (2) ins. by Act 60 of 1973, sec.30)] An appeal, made under section 37 or section 38, shall not operate as a stay of the order appealed against, but the disciplinary committee of the Bar Council of India or the Supreme Court, as the case may be, may for sufficient cause direct the stay of such order on such terms and conditions as it may deem fit.

(2) [(Note:- Section 40 renumbered as sub-section (1) thereof and sub-section (2) ins. by Act 60 of 1973, sec.30) Where an application is made for the stay of the order before the expiration of the time allowed for appealing therefrom under Section 37 or Section 38, the disciplinary committee of the State Bar Council, or the disciplinary committee of the Bar Council of India, as the case may be, may, for sufficient cause, direct the stay of such order on such terms and conditions as it may deem fit.]

**41. Alteration in roll of Advocate. -** (1) Where an order is made under this Chapter reprimanding or suspending an advocate, a record of the punishment shall be entered against his name:-

- a. in the case of an advocate whose name is entered in a State roll, in that roll ;
- b. (Note:- Clause (b) omitted by Act 60 of 1973, sec.31) any where any order is made removing an advocate from practice his name shall be struck off the State roll (Note:- The words "or the common roll, as the case may be" omitted by Act 60 of 1973, sec.31)
2. (Note:- Sub-section (2) omitted by Act 60 of 1973, sec.31)
3. Where any advocate is suspended or removed from practice, the certificate granted to him under Section 22, in respect of his enrolment shall be recalled.

**42. Powers of disciplinary committee.?** (1) The disciplinary committee of the Bar Council shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908), in respect of the following matters, namely :-

- a. summoning and enforcing the attendance of any person and examining him on oath ;
- b. requiring discovery and production of any documents ;
- c. receiving evidence on affidavits ;
- d. requisitioning any public record or copies thereof from any court or office ;
- e. issuing commissions for the examination of witness or documents ;
- f. any other matter which may be prescribed ;

Provided that no such disciplinary committee shall have the right to require the attendance of

- a. any presiding officer of a court except with the previous sanction of the High Court to which court is subordinate ;
- b. any officer of a revenue court except with the previous sanction of the State Government.

(2) All proceedings before a disciplinary committee of a Bar Council shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code, 1860 (45 of 1860), and every such disciplinary committee shall be deemed to be a civil court for the purpose of sections 480, 482 and 485 of Code of Criminal Procedure, 1898 (5 of 1898).

(3) For the purpose of exercising any of the powers conferred by sub section (1), a disciplinary committee may send to any civil court in the territories to which this Act extends, any summons or other process, for the attendance of a witness or the production of a document required by the committee or any commission which it desires to issue, and civil court shall cause such process to be served or such commission to be issued as the case may be, and may enforce any such process as if it were a process for attendance or production before itself.

(4) (Note:- Sub-sections (4) and (5) ins. by Act 60 of 1973, sec.32) Notwithstanding the absence of the Chairman or any member of a disciplinary committee on a date fixed for the hearing of a case before it, the disciplinary committee may, if it so thinks fit, hold or continue the proceedings on the date so fixed and no such proceedings and no order made by the disciplinary committee in any such proceedings shall be invalid merely by reason of the absence of the Chairman or member thereof on any such date.

Provided that no final orders of the nature referred to in sub-section (3) of Section 35 can be made in any proceedings unless the Chairman and other members of the disciplinary committee are present.

(5) Where no final order of the nature referred to in sub section (3) of section 35 can be made in any proceedings in accordance with the opinion of the Chairman and the members of a disciplinary committee either for want of majority opinion amongst themselves or otherwise, the case, with their opinion thereon, shall be laid before the Chairman of the Bar Council concerned or if the Chairman of the Bar Council is acting as the Chairman or a member of the disciplinary committee, before the Vice Chairman of the Bar Council, and the said Chairman or the Vice Chairman of the Bar Council, as the case may be, after such hearing as he thinks fit, shall deliver his opinion and the final order of the disciplinary committee shall follow such opinion.

42A. [(Note:- Ins. by Act 60 of 1973, sec.33) Powers of Bar Council of India and other committee- The provisions of section 42, shall so far as may be, apply in relation to the Bar Council of India, the enrolment committee, the election committee, the legal aid committee, or any other committee of a Bar Council as they apply in relation to the disciplinary committee of a Bar Council.]

**43. Cost of proceedings before a disciplinary committee-** The disciplinary committee to a Bar Council may, make such order as to the cost of any proceedings before it as it may deem fit and any such order shall be executable as if it were an order-

a. in the case of an order of the disciplinary committee of the Bar Council of India, of the Supreme Court.

b. In the case of an order of the disciplinary committee of a State Bar Council, of the High Court.

**44. Review of orders by disciplinary committee-** The disciplinary committee of a Bar Council may of its own motion or otherwise review any order [(Note:- Ins. by Act 60 of 1973, sec.34) within sixty days of the date of that order] passed by it under this Chapter.

Provided that no such order of review of the disciplinary committee of a State Bar Council shall have effect unless it has been approved by the Bar Council of India.

## **THE ADVOCATES ACT,1961**

(Act no. 25 of 1961)

### **CHAPTER VI-MISCELLANEOUS**

**45. Penalty for persons illegally practicing in courts and before other authorities-** Any person who practices in any court or before any authority or person, in or before whom he is not

entitled to practice under the provisions of this Act, shall be punishable with imprisonment for a term which may extend to six months.

**46. Payment of part of enrolment fees to the Bar Council of India-** [Omitted by Act 70 of 1993, sec. 8]

**47. Reciprocity-** (1) Where any country, specified by the Central Government in this behalf by notification in the official Gazette, prevents citizens of India from practicing the profession of law or subjects them to unfair discrimination in that country, no subject of any such country shall be entitled to practice the profession of law in India.

(2) Subject to the provisions of sub section (1), the Bar Council of India may prescribe the conditions, if any, subject to which foreign qualification in law obtained by persons other than citizens of India shall be recognized for the purpose of admission as an advocate under this Act.

**48. Indemnity against legal proceedings -** No suit or other legal proceeding shall lie against any Bar Council or any committee thereof or a member of a Bar Council [(Note:- Ins. by Act 60 of 1973, sec.36) or any Committee thereof] for any act in good faith done or intended to be done in pursuance of the provisions of this Act or of any rules made thereunder.

48AA. [(Note:- Ins. by Act 60 of 1973, sec.37) Review - The Bar Council of India or any of its committee, other than its disciplinary committee, may of its own motion or otherwise review any order, within sixty days of the date of that order, passed by it under this Act.]

48B. [(Note:- Ins. by Act 21 of 1968, sec.19) Power to give directions - (1) For the proper and efficient discharge of the functions of a State Bar Council or any Committee thereof, the Bar Council of India may, in the exercise of its powers of general supervision and control, give such directions to the State Bar Council or any committee thereof as may appear to it to be necessary, and the State Bar Council or the committee shall comply with such directions.

(2) Where a State Bar Council is unable to perform its functions for any reason whatsoever, the Bar Council of India may, without prejudice to the generality of the foregoing power, give such directions to the ex officio member thereof as may appear to it to be necessary, and such directions shall have effect notwithstanding anything contained in the rules made by the State Bar Council.]

**49. General power of the Bar Council of India to make rules-** [(Note:- Section 49 renumbered as sub-section (1) thereof by Act 60 of 1973, sec.38) (1)] The Bar Council of India may make rules for discharging its functions under this Act and in particular, such rules may prescribe.

a. (Note:- Clause (a) subs. by Act 21 of 1964, sec.20) the conditions subject to which an advocate may be entitled to vote at an election to the State Bar Council, including the qualifications or disqualification of voters, and the matter in which an electoral roll of voters may be prepared and revised by a State Bar Council.

(ab) Qualifications for membership of a Bar Council and the disqualification for such membership.

(ac) the time within which and the manner in which effect may be given to the proviso to sub section (2) of section 3

(ad) the manner in which the name of any advocate may be prevented from being entered in more than one State roll.

(ae) the manner in which the seniority among advocates may be determined

(af) [(Note:- Clause (af) subs. by Act 60 of 1973, sec.38) the minimum qualification required for admission to a course of degree in law in any recognized University.]

(ag) the class or category of persons entitled to be enrolled as advocates.

(ah) the conditions subject to which an advocate shall have the right to practice and the circumstances under which a person shall be deemed to practice as an advocate in a court.

b. the form in which an application shall be made for the transfer of the name of an advocate from one State roll to another.

c. The standards of professional conduct and etiquette to be observed by advocates.

d. The standards of legal education to be observed by university in India and the inspection of Universities for that purpose.

e. The foreign qualifications in law obtained by person other than citizens of India which shall be recognized for the purpose of admission as an advocate under this Act.

f. The procedure to be followed by the disciplinary committee of a State Bar Council and by its own disciplinary committee.

g. The restrictions in the matter of practice to which senior advocates shall be subject.

gg. [(Note:- Clause (gg) ins. by Act 60 of 1973, sec.38) the form of dresses or robes to be worn by advocates, having regard to the climatic conditions, appearing before any court or tribunal.]

a. The fees which may be levied in respect of any matter under this Act.

b. [(Note:- Subs. by Act 21 of 1964, sec.20, for clause (I)) General principles for guidance of State Bar Councils and the manner in which directions issued made by the Bar Council of India may be enforced.]

c. Any other matter which may be prescribed.

[(Note:- Proviso ins. by Act 60 of 1973, sec.38) Provided that no rules made with reference to clause (c) or clause (gg) shall have effect unless they have been approved by the Chief Justice of India.]

[(Note:- Subs. by Act 60 of 1973, sec.38, for the words "Provided that" Provided further that] no rules made with reference to clause (e) shall have effect unless they have been approved by the Central Government.

[(Note:- Sub-section (2) ins. by Act 60 of 1973, sec.38) (2) Notwithstanding anything contained in the first proviso to sub section (1) any rule made with reference to clause (c) or clause (gg) of the said sub section and in force immediately before commencement of the Advocates (Amendment) Act, 1973, shall continue in force until altered or repealed or amended in accordance with the provisions of this Act.]

49A. (Note:- Ins. by Act 21 of 1964, sec.21) Power of Central Government to make rules- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purpose of this Act including rules with respect to any matter for which the Bar Council of India or a State Bar Council has power to make rules.

(2) In particular and without prejudice to the generally of the foregoing power, such rules may provide for-

a. Qualification of membership of a Bar Council and disqualification for such membership.

b. The manner in which the Bar Council of India may exercise supervision and control over State Bar Councils and the manner in which the directions issued to orders made by the Bar Councils of India may be enforced.

c. The class of category of persons entitled to be enrolled as advocates under this Act.

d. The category of persons who may be exempted from undergoing a course of training and passing an examination prescribed under clause (d) if sub section (1) of section 24.

- e. The manner in which seniority among advocates may be determined.
- f. The procedure to be followed by a disciplinary committee of a Bar Council in hearing cases and the procedure to be followed by a disciplinary committee of the Bar Council of India in hearing appeals.
- g. Any other matter which may be prescribed

3. (3) Rules under this section may be made either for the whole of India or for all or any of the Bar Councils.

(4) If any provision of a rule made by a Bar Council is repugnant to any provision of a rule made by the Central Government under this section, then, the rule under this section, whether before made or after the rule made by the Bar Council, shall prevail and the rule made by the Bar Council shall, to the extent of the repugnancy, be void.

5. [(Note:- Sib-section (5) Subs. by Act 60 of 1973, sec.39) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session for a total period of thirty day which may be comprised in one session or in two or more successive session and if, before the expiry of the sessions immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule of both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be ; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule].

**50. Repeal of certain enactments -** (1) On the date on which a State Bar Council is constituted under this Act, the provisions of sections 3 to 7 (inclusive), sub-sections (1), (2) and (3) of section 15 and section 20 of the Indian Bar Council Act, 1926 (38 of 1926), shall stand repealed in the territory for which the State Bar Council is constituted.

(2) On the date on which Chapter III comes into force, the following shall stand repealed namely :-

a. sections 6, 7, 18 & 37 of the Legal Practitioners Act, 1879 (18 of 1879) and so much of sections 8,9, 16, 17, 19 and 41 of that Act as relate to admission and enrolment of legal practitioners ;

b. sections 3, 4 and 6 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920) ;

c. so much of section 8 of the Indian Bar Councils Act, 1926 (38 of 1926), as relate to the admission and enrolment of legal practitioners ;

d. the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the admission and enrolment of legal practitioners.

(3) On the date on which Chapter IV comes into force, the following shall stand repealed, namely :-

a. sections 4,5, 10 and 20 of the Legal Practitioners Act, 1879 (18 of 1879) and so much of sections 8, 9 19 and 41 of that Act as confer on legal practitioners the right to practice in any court or before any authority of person ;

b. sections 5,7,8 and 9 of the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920) ;

c. section 14 of the Indian Bar Councils Act, 1926 (38 of 1926), and so much of sections 8 and 15 of that Act as confer on legal practitioners the right to practice in any court or before any authority or person ;

d. the Supreme Court Advocates (Practice in High Courts) Act, 1951 (18 of 1951) ;

e. the provisions of the Letters Patent of any High Court and of any other law conferring on legal practitioners the right to practice in any court or before any authority or person.

(4) On the date on which Chapter V comes into force, the following shall stand repealed, namely :-

a. sections 12 to 15 (inclusive), sections 21 to 24 (inclusive) and sections 39 and 40 of the Legal Practitioners Act, 1879 (18 of 1879), and so much of sections 16, 17 and 41 of that Act as relate to the suspension, removal or dismissal of legal practitioners ;

b. sections 24 to 27 (inclusive) of the Bombay Pleaders Act, 1920 (17 of 1920);

c. sections 10 to 13 (inclusive) of the Indian Bar Councils Act, 1926 (38 of 1926) ;

d. the provisions of the Letters Patent of any High Court and of any other law in so far as they relate to the suspension, removal or dismissal of legal practitioners.

(5) When the whole of this Act has come into force ?

a. the remaining provisions of the Acts referred to in this section which do not stand repealed by virtue of any of the foregoing provisions of this Section (except sections 1, 3 and 36 of the Legal Practitioners Act, 1879 (18 of 1879) shall stand repealed ;

b. the enactments specified in the Schedule shall stand repealed to the extent mentioned therein.

**51. Rule of construction** - On and from the appointed day, reference in any enactment to an advocate enrolled by a High Court in any form of words shall be construed as reference to an advocate enrolled under this Act.

**52. Saving-** Nothing in this Act shall be deemed to affect the power for the Supreme Court to make rules under Article 145 if the Constitution-

a. for laying down the conditions subject to which a senior advocate shall be entitled to practice in that Court.

b. For determining the persons who shall be entitled to [(Note:- Subs. by Act 70 of 1993, sec.9)act or plead] in that Court.

## **THE ADVOCATES ACT,1961**

(Act no. 25 of 1961)

### **CHAPTER VII-TEMPORARY AND TRANSITIONAL PROVISIONS**

**53. Elections of first State Bar Council-** Notwithstanding anything contained in this Act, the elected members of a State Bar Council constituted for the first time under this Act, shall be elected by and from amongst advocates, vakils, pleaders and attorneys, who on the date of the election, are entitled as of right to practice in the High Court and are ordinarily practicing within the territory for which the Bar Council is to be constituted.

Explanation - Where the territory for which the Bar Council is to be constituted includes a Union territory, the expression "High Court" shall include the Court of the Judicial Commissioner of that Union territory.

**54. Term of office of members of first** (Note:- The words "the Bar Council of India and" deleted by Act 21 of 1964, sec.22 and shall be deemed always have been deleted) State Bar Council- Notwithstanding anything contained in this Act, the term of office of the (Note:- The words "nominated and" omitted by Act 14 of 1962, sec.3) elected members of (Note:- The words "the Bar Council of India and" deleted by Act 21 of 1964, sec.22 and shall be deemed always have been deleted.) a State Bar Council constituted for the first time, shall be two years from the date of the first meeting of the Council.



[(Note:- Ins. by Act 21 of 1964, sec.22(ii) and shall be deemed to have always been inserted)  
Provided that such members shall continue to hold office until the State Bar Council is reconstituted in accordance with the provisions of this Act.]

**55. Rights of certain existing legal practitioners not affected-** Notwithstanding anything contained in this Act,-

a. every pleader or vakil practicing as such immediately before the date on which Chapter IV comes into force (hereinafter in this section referred to as the said date) by virtue of the provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (17 of 1920), or any other law who does not elect to be or is not qualified to be enrolled as an advocate under this Act.

b. [(Note:- Clause (b) omitted by Act 107 of 1976, sec.10)]

c. [(Note:- Subs. by Act 21 of 1964, sec.23) every mukhtar practicing as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879, or any other law, who does not elect to be, or is not qualified to be, enrolled as an advocate under this Act.

d. Every revenue agent practicing as such immediately before the said date by virtue of the provisions of the Legal Practitioners Act, 1879 or any other law]; shall, notwithstanding the repeal by this Act of the relevant provisions of the Legal Practitioners Act, 1879 (18 of 1879), the Bombay Pleaders Act, 1920 (Bombay Act 17 of 1920) or other law, continue to enjoy the same rights as respects practice in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed or, as the case may be, to which he was subject immediately before the said date and accordingly the relevant provisions of the Acts or law aforesaid shall have effect in relation to such persons as if they had not been repealed.

**56. Dissolution of existing Bar Council-** (1) on the constitution under this Act of a State Bar Council other than the Bar Council of Delhi hereinafter referred to as the new Bar Council.

a. All properties and assets vesting in the corresponding Bar Council shall vest in the new Bar Council.

b. All rights, liabilities, and obligations of the corresponding Bar Council whether arising out of any contract or otherwise, shall be the rights, liabilities and obligations respectively of this new Bar Council.

c. All proceedings pending before the corresponding Bar Council in respect of any disciplinary matter or otherwise shall stand transferred to the new Bar Council.

(2) In this section, "corresponding Bar Council" in relation to a State Bar Council, other than the Bar Council of Delhi, means the Bar Council for the High Court in the territory for which the State Bar Council is constituted under this Act.

**57. Power to make rules pending the constitution of a Bar Council-** Until a Bar Council is constituted under this Act the power of that Bar Council to make rules under this Act shall be exercised-

a. in the case of the Bar Council of India, by the Supreme Court

b. in the case of a State Bar Council, by the High Court.

58. (Note:- Ins. by Act 14 of 1962, sec.4 and shall be deemed to have always been inserted)  
Special provisions during the transitional period- (1) Where a State Bar Council has not been constituted under this Act or where a State Bar Council so constituted is unable to perform its functions by reasons of any order of a court or otherwise, the functions of the Bar Council or any Committee thereof, in so far as they relate to the admission and enrolment of advocates, shall be performed by the High Court in accordance with the provision of this Act.

(2) Until Chapter IV comes into force, a State Bar Council or a High Court performing the functions of a State Bar Council may enroll any person to be an advocate on a State roll, if he is qualified to be so enrolled under this Act, notwithstanding that no rules have been made under section 28 or that the rules so made have not been approved by the Bar Council of India, and every person so enrolled shall, until that Chapter comes into force, be entitled to all the rights of practice conferred on an advocate under section 14 of the Indian Bar Council Act, 1926.

(3) Notwithstanding anything contained in this Act, every person who immediately before the 1st day of December, 1961 was an advocate on the roll of any High Court under the Indian Bar Councils Act, 1926 or who has been enrolled as an advocate under this Act, until Chapter IV comes into force, be entitled as of right to practice in the Supreme Court, subject to the rule, made by the Supreme Court in this behalf.

(4) Notwithstanding the repeal by sub-section (2) of section 50 of the provisions of the Legal Practitioners Act, 1879, or of the Bombay Pleaders Act, 1920, [(Note:- Subs. by Act 32 of 1962, sec.3 and shall be deemed always to have been so substituted) or of any other law relating to the admission and enrolment of legal practitioners the provision of the Acts, and law aforesaid and any rules made thereunder in so far as they relate to [(Note:- Subs. by Act 21 of 1964, sec.25, for the words "the issue and renewal") the renewal or the issue by way of renewal] of a certificate to a legal practitioner authorising him to practice shall have effect until Chapter IV comes into force and, accordingly, every certificate issued or renewed to legal practitioners (who is not enrolled as an advocate under this Act which is or purports to be issued or renewed under the provisions of either of the aforesaid Acts (or of the other law) during the period beginning with the 1st day of December, 1961 and ending with the date on which Chapter IV comes into force, shall be deemed to have been validly issued or renewed.]

58A. [(Note:- Ins. by Act 21 of 1964, sec.25) Special provisions with respect to certain Advocates- (1) Notwithstanding anything contained in this Act, all advocates who immediately before the 26th day of July, 1948 were entitled to practice in the High Court in Allahabad or the Chief Court in Oudh and who under the provision of the United Provinces High Courts (Amalgamation) Order, 1948 were recognized as advocates entitled to practice in the new High Court of Judicature at Allahabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non-payment of the fee payable to the Bar Council of the said High Court, and all advocates were enrolled as such between the said date and the 26th day of May, 1952, shall for the purpose of clause (a) (1) of section 17 be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Council Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Uttar Pradesh.

(2) Notwithstanding anything contained in this Act, all advocates who immediately before the 10th day of October, 1952 were entitled to practice in the High Court of Hyderabad but whose names were not formally entered on the roll of advocates of that High Court merely by reason of the non payment of the fee payable to the Bar Council of the said High Court shall, for the purpose of clause, (a) of sub section (1) of section 17 be deemed to be persons who were entered as advocates on the roll of the said High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Andhra Pradesh or of Maharashtra.

(3) Notwithstanding anything contained in this Act, all advocates, who, immediately before the 1st day of May, 1960, were entitled to practice in the High Court of Bombay and who applied to get names entered on the roll of advocates of the High Court of Gujarat under the provisions of section 8 of the Indian Bar Councils Act, 1926 but whose names were not so entered by reason of the repeal of the said provision shall, for the purpose of clause (a) of sub section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of the High Court of Gujarat under the said Act and every such person may, on an application being made in this behalf, be admitted as an advocate on the State roll of Gujarat.

(4) Notwithstanding anything contained in this Act, all persons who immediately before the 1st day of December, 1961, were advocates on the roll of the Court of Judicial Commissioner in any Union territory under any law in force in that territory shall, for the purpose of clause (a) of sub section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of High Court under the Indian Bar Councils Act, 1926 and every such person may, on an application made in this behalf, be admitted as an advocate on the State roll maintained in respect of that Union territory.]

58AA. [(Note:- Ins. by Act 26 of 1968, sec.3 and Sch., Part I) Special Provisions in relation to the Union territory of Pondicherry - (1) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter II are brought into force in the Union territory of Pondicherry, were entitled to practice the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date, shall for the purpose of clause (a) of sub section (1) of section 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Council Act, 1926, and every such person may, on an application made in this behalf within such time as may be specified by the Bar Council of Madras, be admitted as an advocate on the State roll maintained in respect of the said Union territory.

(2) Notwithstanding anything contained in this Act, every person, who immediately before the date on which the provisions of Chapter IV are brought into force in the Union territory of Pondicherry, was practicing the profession of law (whether by way of pleading or action or both or in any other way) by virtue of the provisions of any law in force in the said Union territory of Pondicherry, was practicing the profession of law (whether by way of pleading or acting or both or any other way) by virtue of the provisions of any law in force in the said Union territory, who does not elect to be or is not qualified to be, enrolled as an advocate under sub section (1), shall notwithstanding the repeal of the relevant provisions of such law by the Pondicherry (Extension of Laws) Act, 1968, continue to enjoy the same rights as respects in any court or revenue office or before any authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.]

58AB. [(Note:- Ins. by Act 33 of 1968, sec.3) Special provisions with respect to certain persons enrolled by Mysore State Bar Council- Notwithstanding anything contained in this Act or any judgement, decree or order of any court or any resolution passed or direction given by the Bar Council of India, every person who was admitted as an advocate on the State roll by the State Bar Council of Mysore during the period beginning with the 28th day of February, 1963, and ending on the 31st day of March, 1964, on the basis of his having obtained a certificate of pleadership from the High Court of Mysore, shall, save as otherwise provided, be deemed to have been validly admitted as an advocate on that State roll and accordingly entitled to practice the profession of law (whether by way of acting or both).

Provided that where any such person has been elected to be enrolled as an advocate on the roll of any other State Bar Council, his name shall be deemed to have been struck off the roll of the State Bar Council, of Mysore from the date of he was enrolled by the other State Bar Council.

Provided further that the seniority of such person, whether his name is borne on the State roll of the State Bar Council of Mysore, or on the State roll of any other Bar Council, shall for the purposes of clause (d) of sub section (3) of section 17, be determined by reckoning the 16th day of May, 1964 as the date of admission.]

58AB. [(Note:- Ins. by Act 33 of 1968, sec.3) Special provisions with respect to certain persons enrolled by Mysore State Bar Council- Notwithstanding anything contained in this Act or any judgement, decree or order of any court or any resolution passed or direction given by the Bar Council of India, every person who was admitted as an advocate on the State roll by the State Bar Council of Mysore during the period beginning with the 28th day of February, 1963, and

ending on the 31st day of March, 1964, on the basis of his having obtained a certificate of pleadership from the High Court of Mysore, shall, save as otherwise provided, be deemed to have been validity admitted as an advocate on that State roll and accordingly entitled to practice the profession of law( whether by way of acting or both).

Provided that where any such person has been elected to be enrolled as an advocate on the roll of any other State Bar Council, his name shall be deemed to have been struck off the roll of the State Bar Council, of Mysore from the date of he was enrolled by the other State Bar Council.

Provided further that the seniority of such person, whether his name is borne on the State roll of the State Bar Council of Mysore, or on the State roll of any other Bar Council, shall for the purposes of clause(d) of sub section (3) of section 17, be determined by reckoning the 16th day of May, 1964 as the date of admission.]

58AC. [(Note:- Sections 58AC, 58AD, 58AE and 58AF ins. by Act 60 of 1973, sec.40) Special provisions with respect to certain persons enrolled by Uttar Pradesh State Bar Council- Notwithstanding anything contained in this Act or any judgement, decree or order of any court, every person who was enrolled as an advocate by the High Court during the period beginning with the 2nd day of January, 1962 and ending on the 25th day of May, 1962 and was subsequently admitted as an advocate on the State roll by the State Bar Council of Uttar Pradesh shall be deemed to have been validity admitted as an advocate on that State roll from the date of his enrolment by the High Court and accordingly entitled to practice the profession of law ( whether by way of pleading or acting or both).

58AD. Special provisions with respect to certain persons migrating to India- Notwithstanding the repeal by this Act of the provisions of the Legal Practitioner Act, 1879, or of any other law relating to the admission and enrolment of legal practitioners (hereafter in this Section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947, was comprised within India as defined in the Government of India Act, 1935, and who has , before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent, if he-

- a. makes an application for the purpose to the appropriate authority under such Act or law, and
- b. is a citizen of India and fulfills other conditions, if any, specified in this behalf by the appropriate authority aforesaid, and notwithstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same right as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under the relevant provisions of such Act or law as if they had been repealed and accordingly, those provisions shall have effect in relation to such persons.

58AD. Special provisions with respect to certain persons migrating to India- Notwithstanding the repeal by this Act of the provisions of the Legal Practitioner Act, 1879, or of any other law relating to the admission and enrolment of legal practitioners (hereafter in this Section referred to as such Act or law), every person who migrates to the territory of India from any area which, before the 15th day of August, 1947, was comprised within India as defined in the Government of India Act, 1935, and who has , before such migration, been a pleader, mukhtar or revenue agent in any such area under any law in force therein, may be admitted and enrolled under the relevant provisions of such Act or law as a pleader, mukhtar or, as the case may be, revenue agent, if he-

- a. makes an application for the purpose to the appropriate authority under such Act or law, and
- b. is a citizen of India and fulfills other conditions, if any, specified in this behalf by the appropriate authority aforesaid, and notwithstanding the repeal by this Act of the relevant provisions of such Act or law, every pleader, mukhtar or revenue agent so enrolled shall have the same right as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority to which he would be subject under

the relevant provisions of such Act or law as if they had been repealed and accordingly, those provisions shall have effect in relation to such persons.

58AE. Special provisions in relation to the Union territory of Goa, Daman and Diu ? (1) Notwithstanding anything contained in this Act, all persons who, immediately before the date on which the provisions of Chapter III are brought into force in the Union territory of Goa, Daman and Diu, were entitled to practice the profession of law (whether by way of pleading or acting or both) under any law in force in the said Union territory or who would have been so entitled had they not been in public service on the said date, shall. For the purpose of clause (a) of sub section (1) of section 17, be deemed to persons who were entered as advocates on the roll of a High Court under the Indian Bar Councils Act, 1926, and every such person may on an application made in this behalf within such time as may be specified by the Bar Council of Maharashtra, be admitted as an advocate on the State roll, maintained in respect of the said Union territory.

Provided that the provisions of this sub section shall not apply to any person who, on the date of the application aforesaid, was not a citizen of India.

(2) Notwithstanding anything contained in this Act, every person who immediately before the date on which the provisions of Chapter IV are brought into force in the Union territory of Goa, Daman and Diu, was practicing the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force in the said law Union territory, or who does not elect to be or is not qualified to be enrolled as an advocate under sub section (1) shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continues to enjoy the same rights as respects practice in any court or revenue office or before authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or as, the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

(3) On the date of which this Act or any part thereof comes into force in the Union territory of Goa, Daman and Diu, the law in force in that Union territory which corresponds to this Act or such part and which does not stand repealed by virtue of the provisions of section 50 of this Act, shall also stand repealed.

58AF. Special provisions of relation to Jammu and Kashmir- (1) Notwithstanding anything contained in this Act, all advocates who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, were entitled to practice in the High Court of that State, or who would have been so entitled has they not been in public service on the said date, shall for the purpose of clause (a) of sub section (1) of section, 17, be deemed to be persons who were entered as advocates on the roll of a High Court under the Indian Bar Council Act, 1926, and every such person may, on an application mad in this behalf within such time as may be specified by the Bar Council of India, be admitted as an advocate on the State roll maintained in respect of the said State.

(2) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter III are brought into force in the State of Jammu and Kashmir, was entitled otherwise than an advocate to practice the profession of law, (whether by way of pleading or acting or both) by virtue of the provisions of any law in force in the said State, or who would have been so entitled had he not been in public service on the said date, may be admitted as an advocate on the State roll maintained in respect of the said State, if he-

- i. makes an application for such enrolment in accordance with the provisions of this Act, and
- ii. fulfills the conditions specified in clauses (a), (b), (c) and (f) of sub section (1) of Section 24.

(3) Notwithstanding anything contained in this Act, every person who, immediately before the date on which the provisions of Chapter IV are brought into force in the State Jammu and Kashmir, was practicing the profession of law (whether by way of pleading or acting or both or in any other way) by virtue of the provisions of any law in force therein, or who does not elect to be

or is not qualified to be enrolled as an advocate under sub section (1) or sub section (2), shall, notwithstanding the repeal by this Act of the relevant provisions of such law, continue to enjoy the same rights as respects practice in any court or revenue office or before any other authority or person and be subject to the disciplinary jurisdiction of the same authority which he enjoyed, or, as the case may be, to which he was subject, immediately before the said date and accordingly the relevant provisions of the law aforesaid shall have effect in relation to such persons as if they had not been repealed.

58AG. [(Note:- Section 58AG ins. by Act 38 of 1977, sec.7) Special provisions in relation to article clerks- Notwithstanding anything contained in this Act, every person who immediately before the 31st day of December, 1976 has commenced his articleship and passed the Preliminary examination, for the purpose of enrolment as an attorney of the High Court at Calcutta in accordance with rules made under sub section (2) of section 34, before the omission of that sub section by the Advocates (Amendment) Act 1976, (107 of 1976), may be admitted as an advocate on the State roll if he-

(i) Passes, on or before the 31st day of December, 1980-

a. That Final examination in a case where such person has before the 31st day of December, 1976, passed the Intermediate examination.

b. The Intermediate and Final examinations in any other case.

Explanation- For the purpose of this clause, the High Court at Calcutta may prescribe such rules as may be necessary under sub section (2) of Section 34, specifying the nature of the examination and any other matter relating thereto:

ii. (ii) makes an application for such enrolment in accordance with the provisions of this Act, and

(iii) fulfills the conditions specified in clauses (a), (b), (e) and (f) of sub section (1) of Section 24.

58B. [(Note:- Ins. by Act 21 of 1964, sec.25) Special provisions relating to certain disciplinary proceedings- (1) As from the 1st day of September, 1963 every proceeding in respect of any disciplinary matter in relation to an existing advocate of a High Court shall, save as provided in the first proviso to sub section (2), be disposed of by the State Bar Council in relation to that High Court, as if the existing advocate had been enrolled as an advocate on its roll.

(2) If immediately before the said date, there is any proceeding in respect of any disciplinary matter in relation to an existing advocate pending before any High Court under the Indian Bar Councils Act, 1926, such proceeding shall stand transferred to the Bar Council in relation to that High Court, as if it were a proceeding pending before the corresponding Bar Council under clause (c) of sub section (1) of section 56.

Provided that where in respect of any such proceeding the Court has received the finding of a Tribunal constituted under Section 11 of the Indian Bar Council Act, 1926, the High Court shall dispose of the case and it shall be lawful for the High Court to exercise for the purpose all powers conferred on it under Section 12 of the said Act as if that section had not been repealed.

Provided further that where the High Court has referred back any case for further inquiry under sub section (4) of Section 12 of the said Act, the proceeding shall stand transferred to the State bar Council in relation to the High Court as if it were proceeding before a corresponding Bar Council under clause (c) of sub section (1) of section 56.

(3) If immediately before the said date there is any proceeding in respect of any disciplinary matter pending in relation to any pleader, vakil, mukhtar or attorney, who has been enrolled as an advocate on any State roll under the Act, such proceeding shall stand transferred to the State Bar Council on the roll of which he has been enrolled and be dealt with under this Act as if it were a proceeding arising against him thereunder.

(4) In this section "existing advocate" means a person who was enrolled as an advocate on the roll of any High Court under the Indian Bar Council Act, 1926 and who, at the time when any proceeding in respect of any disciplinary matter initiated against him, is not enrolled as an advocate on a State roll under this Act.

(5) The provisions of this section shall have effect, notwithstanding anything contained in this Act.

59. [(Note:- Ins. by Act 14 of 1962, sec.4 and shall be deemed to have always been inserted)  
Removal of difficulties- (1) if any difficulty arises in giving effect to the provisions of this Act, particularly in relation to the transition from the enactments repealed by this Act to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provision not inconsistent with the purpose of this Act, as appear to it to be necessary or expedient for removing the difficulty.

2. An order under sub section (1) may be made so as to have retrospective effect from the date not earlier than the 1st day of December, 1961.]

60. [(Note:- Ins. by Act 32 of 1962, sec.4) Powers of Central Government to make rules- (1) Until rules in respect of any matter under this Act are made by a State Bar Council and approved by the Bar Council of India, the power to make rules in respect of that matter shall be exercisable by the Central Government.

(2) The Central Government after consultation with the Bar Council of India may, by notification in the official Gazette, make rules under sub section (1) either for any State Bar Council or generally for all State Bar Councils and the rules so made shall have effect, notwithstanding anything contained in this Act.

(3) Where in respect of any matter any rules are made by the Central Government under this section for any State Bar Council, and in respect of the same matter, rules are made by the State Bar Council and approved by the Bar Council of India, the Central Government may, by notification in the official Gazette, direct that the rules made by it in respect of such matter such matter shall cease to be in force in relation to that bar Council with effect from such date as may be specified in the notification and on the issue and such notification the rules made by the Central Government shall, accordingly, cease to be in force except as respects thing done or omitted to be done before the said date.

## **THE ADVOCATES ACT, 1961**

(Act no. 25 of 1961)

### **THE SCHEDULE**

Repeal of certain enactments

Short title Extent of repeal

1. The Legal Practitioners (Woman) Act, 1923 The whole (23 of 1923).
2. The Legal Practitioners (Fees) Act, 1926 The whole (21 of 1926).
3. The State Reorganisation Act, 1956 Section 53.
4. The Bombay Reorganisation Act, 1960 Section 31 (11 of 1960)